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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 962

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

CHARLES V. FALKENBERG,
221 N. LaSalle Street,
Chicago, Illinois 60601,
Attorney for Petitioner.

WILLIAM HETTLEMAN,
Of Counsel.

MIDWEST LAW PRINTING CO., 336 N. MICHIGAN, CHICAGO 60601, FINANCIAL 6-2988

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Thomas A. McManigal, prays that this Court will issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review a judgment of that court, entered July 21, 1967, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, denying a motion to vacate an order dismissing his amended complaint for a declaratory judgment and injunctive relief against the Board of Commissioners of Cook County, Illinois, and the State's Attorney of Cook County, respectively, for want of jurisdiction.

OPINIONS BELOW.

The District Court rendered no written opinion, but its order (A. 27) cited authority for lack of jurisdiction to grant injunctive relief. The opinion of the Court of Appeals for the Seventh Circuit is not reported yet. It is printed as Appendix A.

JURISDICTION.

The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). Jurisdiction of the District Court was predicated on 28 U.S.C. § 1343 and on 42 U.S.C. § 1983, § 1985, and § 1988. Jurisdiction to convene a three-judge court was based on 28 U.S.C. § 2281 and § 2284.

The judgment affirming the judgment of the trial court was entered on July 21, 1967, and a timely petition for rehearing was denied on September 27, 1967.

QUESTIONS PRESENTED.

Whether an amended complaint charging that (pursuant to a conspiracy between the majority of the members of the executive committee of a privately founded and privately conducted and maintained corporation organized by lawyers under a special charter as their law library and workshop for their mutual benefit, and not for profit, and successfully operated by them as such for over one hundred and ten years, and the board of county commissioners and the state's attorney of the county, for the corporation to turn over all its assets to the county without any compensation, under a purported application of the *cy pres* doctrine, over the objection by an almost unanimous vote of the members attending a special meeting called to approve or disapprove the transaction, in order to establish a publicly founded and publicly maintained county law library under void statutes) the corporation and county commissioners have filed a suit and obtained a judgment approving their contract and ordering it to be carried into execution when affirmed by final review, and that the majority of the executive committee of the corporation and the county board of commissioners are threatening to file suit to cancel a lease under which the corporation occupies space in the county building which has several years to run (to the injury of plaintiff and other members of the corporation by taking their property from them without just compensation, and depriving them of their personal and property rights without due process of law, and denying to them the equal protection of the

laws, and impairing the obligation of their charter and the lease, in violation of Art. 1, sec. 10 of the United States Constitution, and the fourth, fifth, and fourteenth amendments thereto), and praying that the district court enter a declaratory judgment that the statute seeking to interfere with peaceable possession of the premises and to dispossess and oust the corporation from its leased premises, states a federal cause of action and requires the convening of a three-judge court and the issuance of an injunction until review by this Court.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES.

(See Appendix B)

STATEMENT OF THE CASE.

On July 1, 1966, petitioner filed his complaint *in rem*, under *Ex parte Young*, 209 U.S. 123 (1908) (A. 1), to stop Cook County's interference with the Institute's peaceable possession of its premises by trespass or by taking action in the state courts to cancel the 11th decennial, bilateral lease (A. 16).

On August 5, 1966 (A. 2), the respondents moved to dismiss that complaint because (1) no jurisdiction over the subject matter; (2) no claim on which relief could be granted; (3) no justiciable case or controversy; (4) no federal question; (5) no invasion of rights under the 4th, 5th, or 14th amendments to the Federal Constitution.

The respondents' motion to dismiss was granted (A. 2) on the first two grounds, on August 31, 1966. On September 7, 1966, however, the order was vacated (A. 2) and leave granted to file the tendered Amended Complaint *in rem* (A. 3-14). It was dismissed *sua sponte instanter*, without any comment or reason (A. 2, 21). It will be seen, at page 10 of this Petition that abstention, under § 2283, was the real and sole reason therefor.

The petitioner's Amended Complaint, filed as a class suit for himself and all members of The Chicago Law Institute, Illinois lawyers, and citizens, alleged that the Chicago Law Institute is a private, non-profit (net-cost, by definition) membership service corporation (par. 4, A. 4-5), and drew in question (par. 2, A. 4) the unconstitutionality of the 1963 amendment to the County Law Libraries Act, 1965 Ill. Rev. Stat., c. 81, § 81, and the Cook

County ordinances of December 11, 1962, September 30, 1963, June 17, 1965 and November 23, 1965, as sought to be applied to petitioner and all Institute members, as had the appellants in the companion cases on appeals from the Supreme Court of Illinois final orders; but the principal relief prayed was different: injunction against Cook County officers taking any step in the state courts to cancel or annul the eleventh decennial, bilateral lease (A. 16-19) until review by this Court. Petitioner relied on *Ex parte Young,* 209 U.S. 123 (1908), and asked for a three-judge district court, pursuant to Title 28, U.S.C. § 2281, to decide if the evidence justified such relief, a declaratory judgment, and retention of jurisdiction until final review by this Court (A. 13-14).

Jurisdiction was invoked (par. 1, A. 3) because (1) the matter in controversy exceeded $10,000, exclusive of interest and costs (28 U.S.C. § 1331); and (2) the Institute member's property and personal rights, privileges and immunities secured them by the U.S. Constitution and laws, were, under color of state statutes and ordinances, threatened and denied them (Title 28 U.S.C. § 1343; Title 42 U.S.C. §§ 1983, 1985 and 1988).

The petitioner's Amended Complaint (A. 5-6 failed to designate par. 5) set out in full the 11th decennial, bilateral lease, executed on March 11, 1958 (A. 16-19), Cook County's December 11, 1962 ordinance reaffirming said lease (A. 34, 9 lines from top), and the conspiracy to deprive the Law Institute and its members of their personal and property rights under that lease (pars. 8-13, A. 7-9). Pars. 14-18 (A. 9-11) recite a long series of Cook County conspiratorial and oppressive acts to obstruct or defeat the decree of July 13, 1966 (Title 42 U.S.C. § 1985),

culminating in physical ouster, on August 22, 1966, of the Institute and its members from their workshop, denying liberty of ingress and egress under color of the ordinance of November 23, 1965, and discriminating in the treatment accorded them vis a vis other of its tenants.

Par. 8 of the Amended Complaint (A. 7) stated very clearly that, at their special meeting on June 18, 1965, the Institute members present thereat, in person and by proxy, rejected almost unanimously, by about 600 votes against 13, the Institute Board's recommendations to donate, to file *cy pres* suit, and to dissolve (A. 35-37).

Pars. 10 and 11 of the petitioner's Amended Complaint (A. 7-8) stated that, notwithstanding such complete repudiation, on June 18, 1965, 4 of the 7 members of the Institute's Board voted illegally, on November 12, 1965, to file the state suit, nevertheless, and the respondents knew it, when they passed the ordinance, on November 23, 1965, authorizing its president, Seymour Simon, to enter into the "donative" contract for the Board of County Commissioners of Cook County, in that (1) the purported "donative" contract, later designated as Exhibit C attached to the Amended Complaint in the Cook County Circuit Court, in 65 Ch 6863, had not been presented to the Institute's Board before or at the November 12, 1965 Institute Board meeting for study and analysis, although the Corporation's Secretary certified that it had been presented thereat; (2) Cook County had, by ordinance on June 17, 1965, appointed Allman and Cecchini, 2 of the 4 Institute Board members to the Cook County Library Advisory Board (1963 amendment to the County Law Libraries Act, 1965 Ill. Rev. Stat., c. 81, § 81, par. 4), which fact was never disclosed to the Institute members

at their special meeting the next day, or ever, and that Allman and Cecchini had voted the 2 of the 4 affirmative votes blindly, and in breach of their fiduciary duty to the Institute members, to authorize the Institute's president, another Cook County appointee to the Cook County Library Advisory Board, to enter into the "donative" contract with Cook County, their principals.

The petitioner's Amended Complaint (pars. 14 and 16, A. 9-10) alleged that, despite the built-in supersedeas on page 7 of the Exhibit C (A. 8), and other of its provisions (A. 8-9), Cook County, on August 10, 1966, volunteered, in defiance of the decree entered July 13, 1966 and for the purpose of evading, obstructing and defeating it, to "operate the (Institute) library as a County Law Library under the applicable statutes" (meaning 1965 Ill. Rev. Stat., c. 81, § 81, the County Public Libraries Act, as amended in 1963 to apply to Cook County—A. 41, 2d par.). Cook County has, indeed, so operated the Chicago Law Institute Library under Cook County promulgated rules, exercising all the incidents of ownership without formal bill of sale and in violation of the trial judge's directive order, entered August 22, 1966, to maintain the *status quo* until review by this Court; i.e., to operate the Chicago Law Institute Library in the same manner as prior to the entry of the decree on July 13, 1966, under the Law Institute's sole management (Jurisdictional Statement in companion cases on appeal from final orders of the Illinois Supreme Court).

On October 6, 1966, petitioner filed a motion to vacate the trial court's order of September 7, 1966, dismissing his Amended Complaint *sua sponte instanter,* without stating any reason. After summarizing the ultimate facts,

paragraph by paragraph, alleged in the Amended Complaint, (A. 23-24), par. 7 of the Memorandum Supporting the Motion to Vacate (A. 24) stated that these ultimate facts, admitted to be true by the dismissal of the Amended Complaint, indicated (1) the deprivation of his and the Institute's members' personal and property rights, violative of the 4th, 5th and 14th amendments to the U.S. Constitution and the implementary Title 28 U.S.C. § 1343, and Title 42 U.S.C. §§ 1983, 1985, 1988 by the seizure of its premises and books; (2) a violation of Art. I, § 10 by impairing its obligations under the 11th decennial, bilateral lease contract.

On October 13, 1966, the trial court refused to vacate said order of September 7, 1966, because, as noted on the order, Title 28 U.S.C. § 2283, *Sarfaty* v. *Nowak,* 369 F(2) (7th CCA, October 5, 1966) and *Dombrowski* v. *Pfister,* 380 U.S. 479, 483-485 forbade it to grant the injunction prayed (A. 27).

On November 10, 1966, the plaintiff unsuccessfully filed a Motion to Reconsider the order of October 13, 1966. The motion was supported by the Affidavit of William Hettleman and Exhibits X, Y, and Z bearing on the federal questions involved, and a 9 page Memorandum of Law examining in the minutest detail the cases of *Ex parte Young, Dombrowski,* and a very closely analogous case, *Amer. Houses, Inc.* v. *Schneider,* 211 F. (2) 880 (3d CCA, 1954) (A. 28-51). The trial court finally entered its order on December 12, 1966, without any comment or reason, denying the Motion to Reconsider. (A. 52).

CONCISE ARGUMENT FOR ALLOWING THE WRIT.

A. Section 2283 Was Inapplicable.

1. Abstention was, thus, the only issue for the Court of Appeals to decide. Petitioner's counsel tried to confine his oral argument before it to that issue. Respondents argued there their granted motion to dismiss his original complaint. The order thereon had been vacated upon filing of an Amended Complaint (A. 2(h), 21). The Court of Appeals' opinion (Appendix A) seems to indicate it passed on triable issues of fact, the function of the requested three-judge district court.

A similar situation arose in the Ninth Circuit Court of Appeals in *Marshall* v. *Sawyer,* 301 F(2) 639 (1962). The Sawyer trial court dismissed *solely* on sec. 2283, as did the trial court in the case at bar. On appeal, Sawyer argued that the complaint made no claim on which relief could be granted. Observed the Court, at p. 647:

> "While this was one ground of the motion, *it was not a ground relied upon by the District Court in dismissing the action.*
>
> "A complaint is not subject to dismissal upon this ground unless it appears *beyond reasonable doubt* that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Cawley* v. *Gibson,* 355 U.S. 41. *Gruen Watch* v. *Artists Alliance,* 9 Cir. 191 F(2) 700."

The Ninth Circuit Court of Appeals then stated that the Complaint was sufficient to withstand a motion to dismiss on the indicated ground, and that upon remand, the defendants could test the complaint's adequacy, and

the plaintiff will have a chance to amend the complaint in that respect.

2. The prayer of the petitioner's Amended Complaint did not ask a *stay* of any proceedings in any state court, but only to stop the Board of Commissioners of Cook County from *starting* one. Hence, sec. 2283 did not grant the trial court power to refuse to grant an injunction if the facts, upon trial, warranted such action.

3. *Sarfaty* was clearly not in point.

4. *Dombrowski* held the abstention of the two district judges error, even Mr. Justice Harlan agreeing in dissent (p. 502) that they should have retained jurisdiction till the state court construed the state anti-subversive statute, even as the trial court in the case at bar should have retained jurisdiction, as prayed (A. 14).

An elaborate footnote on § 2283 appears as No. 2, on page 484 of this Court's opinion in *Dombrowski,* Mr. Justice Brennan commenting:

> "This statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bars *stays* of suits already instituted. See *Ex parte Young,* supra."

The affirmance by the Seventh Circuit Court of Appeals was in direct conflict with this Court's *Dombrowski* holding!

5. Even if § 2283 did apply, petitioner pointed out to the lower courts that, in addition to the exceptions there stated, the most firmly established one is that the trial court cannot abstain where a proceeding *in rem* is first filed in the federal trial courts. *Toucey* v. *N. Y. Life,* 314 U.S. 118. A divided Court there agreed unanimously on this point: the majority at p. 139; the minority at p. 145.

B. The Petitioner's Amended Complaint Complied With Title 28, Secs. 1343 And 2281; And Title 42, Secs. 1983, 1985 And 1988.

1. It stated adequately a cause of action.

a. Judge Wisdom's following views in *Dombrowski*, 227 F.S., approved by this Court, are applicable:

"Assuming the truth of the complaint, as the Court HAD to do in order to dismiss the suit, . . . *Whether the State is misusing its power can be determined only after a fair and full hearing . . . There is no way of deciding whether a law is applied unconstitutionally without hearing evidence as to its application.* Evidence was also admissible to show the purpose, operation and effect of the law (at pp. 571, 2d column, 572, 1st column) . . .

"The Court did not get around to stating why the complaint is defective. The fact that the suit is against the State and its officers might affect judicial discretion to withhold the relief prayed for, but *it does not affect the plaintiff's right or cause of action* (at p. 574, 2d column).

"The constitutionality of a statute, *valid on its face*, may be assailed by proof of facts tending to show that the statute, *as applied to a particular article* (or person) *is without support in reason* . . . As Mr. Justice Holmes has said: 'The determination as to the plaintiffs' rights turns almost wholly upon the facts to be found . . . *All their constitutional rights, we repeat, depend upon what the facts are found to be.' . . . Perhaps the State is being falsely accused; perhaps not. I know this, however: the plaintiffs have a right to sue in the federal district court and fair play entitles them to a day in court to make their proof.*" (at p. 575) (Italics supplied).

b. Title 28 U.S.C. § 1343 protects against 2 or more persons conspiring to obstruct or defeat the due course of justice. What better evidence is needed than the re-

spondents taking the law in their own hands, seizing premises under a valid and subsisting lease, in violation of the supersedeas it itself created in Exhibit C, the contract attached to the Amended Complaint in 65 CH 6863, in violation of the decree entered on July 13, 1966, and of the trial court's order of August 22, 1966 to keep the *status quo* till review by this Court?

c. As to Title 42 U.S.C. secs. 1983, 1985, 1988, again Judge Wisdom's observations at p. 579, in *Dombrowski*, apply:

> "In the Civil Rights Act, Congress established a distinct federal cause of action in favor of those whose constitutional rights have been invaded . . . *As a matter of law, since such cases involve a federal question, the right existed anyway.*"

2. Petitioner argued throughout the proceedings in the lower courts that *Ex Parte Young* was controlling on the trial court's exercise of jurisdiction (A. 25; 43; 44; 45; 46; 47).

a. Again, Judge Wisdom's summary is worth noting, when he referred to the doctrine of abstention "now developing as nicely as if Dr. Frankenstein were in charge of it":

> "The landmark authority on the power of a federal court to enjoin state enforcement of a law impairing a federal protected right is *Ex Parte Young* . . . although recognition of such constitutional power goes back to *Osborn* v. *Bank of the U. S.*, 1824, 9 Wheat. 738."

b. Both the trial court and the Court of Appeals ignored *Ex Parte Young* completely! The Court of Appeals ignored *Dombrowski* completely, though the trial court cited it inaccurately. Its opinion is directly contrary to both of these decisions of this Court (Rule 19 (1)(b)).

3. The Court of Appeals' Opinion *misstated* material allegations in the Amended Complaint:

a. At the bottom of page 2 of the opinion, it is stated that the Amended Complaint stated

> "that with the completion of the Civic Center, to which the Cook County Courts were removed, the law library of the Institute was moved August 12, 1966 to that location, contrary to the desires of some 600 of the Institute's approximate 1400 members; . . ."

(1) No such allegation appeared in the Amended Complaint. The impression this quotation in the opinion creates is that a minority only of the Institute's members were opposed to removal from the 10th floor of the Cook County Building, Chicago, to the Civic Center.

(2) This quotation from the opinion took out of context completely the allegations to the contrary in paragraphs 7, 8, and 9 of the Amended Complaint (A. 6-7, 23, par. numbered 3; A. 29, middle of page) (to which that quotation referred clearly).

a. Had time been adequate for a more intensive campaign (A. 32-37) for proxies and declarations of intent, (the call permitting only 10 working days) a greater percentage of the membership would have opposed. What counts, legally, of course, is the vote at the June 18, 1965 members' special meeting: 600 vs. 13!

(3) The quotation in the opinion states erroneously the removal occurred August 12, 1966; the lock-out of the members occurred on that date; the removal occurred from August 22, 1966 through September 2, 1966 (A. 10, pars. 16 and 17 of the Amended Complaint). The further impression is created that the membership disapproval and the removal were practically contemporaneous.

(4) The last paragraph of page 3 of the opinion made the essence of the complaint a dispute between "some" members of the Institute and its Board, in the face of a record that pointed out repeatedly that 600 members, almost all that voted, voted against the "donative" contract at their June 18, 1965 special meeting, and that, (pursuant to a conspiracy between the respondents and unfaithful members of the Institute's Board, six of whom Cook County made its undisclosed agents on the Cook County Library Advisory Board), such a contract was, nevertheless, executed on December 6, 1965. (The Amended Complaint, par. 8, A. 7; par. 4, A. 23; Affidavit of William Hettleman, A. 29).

a. Respondents' brief and oral argument before the Court of Appeals carried the above theme of the insubstantial, and even frivolous, character of the suit at bar, a step further: the petitioner and the Institute members had no pecuniary interest in the Chicago Law Institute, as alleged in par. 20 of the Amended Complaint, because, concededly, it was not created for profit. Their motion to dismiss and the lower court's order of dismissal, had to admit the truth of the allegations in par. 20. The private foundation of The Chicago Law Institute and the rights, pecuniary and otherwise, of the members has been gone into at great length in the Jurisdictional Statement, in the companion cases on appeal from final orders of the Supreme Court of Illinois.

4. The Court of Appeals' opinion *omitted completely* references to vital ultimate facts alleged in the petitioner's Amended Complaint and supported by the Record:

a. The constant intimidation and threats of ouster pervaded the atmosphere since 1961, becoming stronger as

the June 18 special meeting approached (A. 28), reaching an aggravated form thereafter while 65 CH 6863 was going through the Cook County trial court (A. 11), before its opinion and decree were filed. (A. 20 contains the photostatic copies of newspaper items instigated by Cook County:

> The *Chicago's American* of June 20 and 21, 1966:
>
> "The 10th floor quarters of the County Building, now housing the library, will be lost to the Institute and members have been searching for new space."
>
> "The County has given the Institute notice it will have to move.")

These threats culminated in the overt acts of August 10, 1966 (A. 9, Coman letter), the August 22-September 2, 1966 physical seizure of the Institute's papers and effects (A. 10, pars. 16-17), and in defiance of the July 13, 1966 decree and the trial court's order of August 22, 1966 (Jurisdictional Statement, in companion cases, on appeals from the final orders of the Supreme Court of Illinois).

b. Page 3, lines 5-6 from the top, of the Court of Appeals' opinion stated "that the Institute's executive committee voted like authority (on November 12, 1965) to the Institute's president" to execute the purported "donative" contract, Exhibit C, but fails to state the vote was illegal as contrary to the members' almost unanimous vote at their special meeting, on June 18, 1965; or that "the contract with Cook County . . . had not been presented even to them, prior to or at the said meeting for study and analysis" (A. 7, par. 10); or that 2 of the 4 votes were cast by 2 undisclosed agents of Cook County, its appointees by ordinance of June 17, 1965 to the Cook County Library Advisory Board, in conflict with their fiduciary duty to the Institute members.

c. Although the Court did state, in the middle of page 3 of its opinion, that the petitioner had claimed, set up and asserted in his Amended Complaint and throughout the proceedings in the trial, and intermediate appellate, courts his federally protected rights, including immunity from threatened state action being taken for which injunctive relief was sought, it did not, nevertheless, refer to the specific constitutional provision alleged to be infringed (A. 12, par. 20), such as Art I, sec. 10, and amendments 4, 5, 14(1), since this Court has indicated such a requirement for it to entertain jurisdiction to review.

5. The last paragraph of the Court of Appeals' opinion misapplied the impertinent *Ex Parte Collins* and *Pierre v. Jordan*, cited by the respondents, to prove that the Cook County ordinances (Appendix B to this Petition) were not "state statutes" within sec. 2281, but merely local law.

a. Both cases involved cities. They stand differently from counties, a subdivision of the States: Mr. Justice Taney made this clear in *Md. v. B & O R.R. Co.*, 3 How. at 550 bottom; and this Court further in *C.B. & Q. R.R. v. Otoe County*, 83 U.S. at 676. The *County of Cook v. City of Chicago*, 311 Ill. at 239-240 summarizes the distinction clearly:

> "*A Municipal corporation is created principally for the advantage and convenience of the* locality. *County* and township *organizations are created in this State with the view to aid in carrying out the policy of the State at large for . . . the administration of justice.* The powers and functions of *county* and township *organizations, therefore, as distinguished from MUNICIPAL CORPORATIONS, have a direct and exclusive bearing on and reference to the general, rather than local, policy of government of the State* (citing cases from the State Reports of Ala., Ky., N. C., Ohio,

> Wisc., and 1 Dillon, 4th edit., Sec. 23). Counties and Towns, being purely auxiliaries of the State, owe their creation to the general statutes of the States which confer upon them all the powers which they possess and prescribe all the duties and liabilities to which they are subject." (italics supplied)

The county's legislative powers are not, thus, local but as general as that of the state. Its ordinance is a "state statute."

b. *Pierre* v. *Jordan,* 333 F(2) 951 (9th CCA) seems to have been soundly criticized, as erroneous, in 78 Harvard Law Rev. 1264 (April, 1965).

6. The top of page 4 of the Court of Appeals' opinion relied on its own decision in *Ream* v. *Handley,* cited by the respondents. This was a mere dictum and contradicted Webster's exposition in *Dartmouth College* of a corporate member's rights. It is in conflict, moreover, with its own later *Stamler* case, cited in its opinion's closing paragraph (Rule 19(1)(b)).

a. *Ream* v. *Handley* held, as did *Pierre* v. *Jordan,* that sec. 2281 was inapplicable because there had been no threat to take property, and so no injunctive relief could be granted, nor was there evidence of discrimination in the purchase of surrounding property.

b. In *Stamler,* (called to trial court's attention, A. 53) a Civil Rights case, the Court held and Judge Kiley stated, as did Judge Wisdom in *Dombrowski,* that there was no doubt the complaints "at least formally state a basis for equitable relief" and "the case presented otherwise comes within the requirements of the three-judge statute."

c. The petitioner sought for himself and all Institute members all the franchises, rights, privileges, and im-

munities they had under the Institute's special charter of 1857, protected by the U.S. Constitution and civil rights laws, which do not necessarily include monetary rights, but which are personal, as well as property, rights many students of constitutional law contending they are indistinguishable. The petitioner and the Institute members' support stems from the *Dartmouth College* case, 4 Wheat. 518 (1819). Arguing for this position, which Mr. Chief Justice Marshall and Mr. Justices Washington and Story followed, from 2 Bl., *Com.* 37, Webster stated at pages 572-573:

> "It cannot be necessary to say much in refutation of the idea that there cannot be a legal interest, or ownership, in anything which does not yield a pecuniary profit; *as if the law regarded no rights but the rights of money, or of visible tangible property.*"

7. The Court of Appeals' opinion ignored 2 cases (1 in the 3d CCA, and the other in this Court) called to its and the district court's attention (A. 49) which conflict with its view of equitable abstention (Rule 19(1)(b)).

a. *American Houses, Inc.* v. *Schneider,* 211 F(2) 880 (1954) is closely analogous to the case at bar, almost on all fours with it. An *in rem* action was begun by the plaintiff-tenant in the federal court to restrain a landlord, claiming the tenant's lease expired, from taking any steps under the state's landlord act to oust him. In affirming the trial court's injunction, Judge Hastie, speaking for the Third Circuit Court of Appeals' refusal to be bound by the doctrine of equitable abstention, and indicating the argument based on sec. 2283 irrelevant, said at p. 885, second column:

> "Otherwise a federal court could never effectively enjoin a defendant in any matter within the concurrent jurisdiction of national and state courts."

(1) Three related cases of stalling in the state courts were called to the trial and appellate court's attention violating Art. II, § 19 of the Illinois Constitution (Bill of Rights)

> ("Every person . . . ought to obtain, by law, right and justice freely, . . . promptly and without delay.") (A. 51, Main Brief 11-15; Reply Brief, p. 9).

b. *Mosher* v. *City of Phoenix,* 287 U.S. 29 (1932) is inconsistent with *Ex Parte Collins,* 277 U.S. 565 (1928). The City of Phoenix passed an ordinance for street improvements. Mrs. Mosher sued to enjoin taking her property without compensation. No diversity was alleged, as jurisdiction was founded on a federal question. Her petition was denied on the ground that her allegations did not raise a federal question. In reversing, this Court stated unanimously, through Mr. Chief Justice Hughes, at page 32:

> "This Court held that 'whether the plaintiff has any rights that the City is bound to respect can be decided only by taking jurisdiction of the case' and that *it was necessary for the district court to deal with the merits.* . .
>
> "We are of the opinion that the allegations of the bill of complaint, that the City, acting under the color of state authority, was violating the asserted private right secured by the Federal Constitution, presented a substantial federal question and that it was error of the District Court to refuse jurisdiction."

c. It may not be inappropriate to note here that par. 6 of the Amended Complaint (A. 6) alleged the participation of the federal judges, in Chicago in 1962, in negotiations to acquire the library of The Chicago Law Institute. The judges included the trial judge Julius J. Hoff-

man, a former Cook County Circuit Court judge, and Circuit Court Judge Castle, a former DeKalb County judge, who wrote the opinion.

C. This Court Should Take Jurisdiction Because It Is A Federal Question Itself Whether The Constitutional Rights Of The Petitioner And All Like Him Have Been Infringed. Additionally, As Pointed Out In The Companion Cases On Appeal From The Final Order Of The Supreme Court Of Illinois, Jurisdictional Statement, The Federal Case Represents But An Extension Of The Cook County Technique To Substitute Appropriation Of Private Property Of A Private Corporation For Public Use Without Just Compensation.

The danger, in this age of public indulgence in the seizure of private property for public use, is that the trend will develop to misapply the *cy pres* doctrine.

CONCLUSION.

For the above reasons, petitioner respectfully asks that this suit and the proceedings in the trial and appellate courts be reviewed.

Respectfully submitted,

CHARLES V. FALKENBERG,
221 N. LaSalle Street,
Chicago, Illinois 60601,
Attorney for Petitioner.

WILLIAM HETTLEMAN,
Of Counsel.

APPENDIX A.

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1966 — APRIL SESSION, 1967

No. 16080
THOMAS A. MCMANIGAL,
Plaintiff-Appellant,
v.
SEYMOUR SIMON, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JULY 21, 1967

Before SCHNACKENBERG, CASTLE and FAIRCHILD, *Circuit Judges.*

CASTLE, *Circuit Judge.* Thomas A. McManigal, plaintiff-appellant, prosecutes this appeal from orders of the District Court denying his motion to vacate a previous order of the court dismissing his amended complaint, and denying his subsequent motion that the District Court notify the Chief Judge of this Court to designate two other judges to serve as members of a three-judge court to hear and determine plaintiff's action.

Plaintiff's amended complaint sought declaratory and injunctive relief against the defendants-appellees, the members of the Board of Commissioners of Cook County, Illinois, and the State's Attorney of Cook County, respectively. Jurisdiction of the District Court was predicated on 28 U.S.C.A. §1343 and 42 U.S.C.A. §1983, §1985

and §1988, and the amended complaint requested the convening of a three-judge court as provided under 28 U.S.C.A. §2281 and §2284.

From our examination of the record we conclude that the District Court lacked jurisdiction of the plaintiff's action. Accordingly, we affirm the orders appealed.

Plaintiff's amended complaint sought to have declared invalid a resolution of the Board of Commissioners of Cook County authorizing the Board's president to enter into a proposed contract with the Chicago Law Institute and sought to restrain the defendants from commencing any state court action to cancel a March 11, 1958 agreement between the County and the Institute under which the law library of the Institute was to be housed in the Cook County Court House for a ten year period expiring April 4, 1968, in exchange for free access to the library by the judges of courts of record and certain designated county and city officers.

The complaint alleges, *inter alia,* that plaintiff is a "stockholder-member" of the Chicago Law Institute, and sues on behalf of himself and all other such members; that the Chicago Law Institute is an Illinois corporation created February 18, 1857, by a special Act of the Illinois legislature; that the corporation succeeded an earlier unincorporated not-for-profit association formed to provide for the exchange of law books between the organizers; that pursuant to contracts renewable every ten years the Institute has been furnished space in the Cook County Court House to house its law books "in return for which the Corporation's charter, Section 6, secured to all Federal and State judges of courts of record 'the free access to, and the full and entire use and enjoyment of the said library and all the privileges and advantages thereof free of expense under the same rules and regulations as may be provided by the by-laws of the said Corporation for the proprietors or shareholders thereof' "; that the current contract expires April 4, 1968; that with the completion of the Civic Center, to which the Cook County courts were removed, the law library of the Institute was moved August 12, 1966, to that location contrary to the desires of some 600 of the Institute's approximate 1400 members; that prior thereto the defend-

ant Board of Commissioners of Cook County by resolution authorized its president to execute a proposed contract with the Institute providing for the donation of the Institute's law library to the County and that the Institute and the County jointly seek state court approval of such contract; that the Institute's executive committee voted like authority to the Institute's president; that such contract was executed, state court approval sought, a final decree entered July 13, 1966, approving the contract, and an appeal therefrom taken by certain of the Institute's members; and that plaintiff and other members of the Institute have a pecuniary interest in the Institute, and thereby an interest in its assets including the unexpired agreement of March 11, 1958.

The complaint asserts that, by reason of the acts of the defendants, the plaintiff and other shareholder members of the Institute have been denied due process of law, denied equal protection of the laws, and deprived of the equal right to own and defend their property, all in violation of the Constitution of the United States, and all under color and pretense of law; that the Institute and its stockholder members have suffered great and irreparable damage, injury and loss of property, and have no adequate remedy at law, and may be deprived of their right to sue for damages for breach of the March 11, 1958, agreement unless defendants are restrained from instituting state court action to cancel, annul, or terminate that agreement; and that the plaintiff and other members will be deprived of their pecuniary interest in the March 11, 1958, agreement without due process of law unless the defendants are so enjoined.

In its essence plaintiff's complaint shows simply a dispute between some members of the Institute and its governing body, the executive committee, with respect to whether the corporation should donate its law library to the county, coupled with the claim of the plaintiff to a pecuniary interest in the current contract between the Institute and the County under which the books were housed in the County Court House and from which they have been removed to the new location of the courts in the Civic Center pursuant to the agreement for donation.

This Court has pointed out (*Ream* v. *Handley*, 7 Cir., 359 F. 2d 728, 731) that there is controlling authority to the effect:

> ". . . that the civil rights statutes, of which §1983 is one, do not confer jurisdiction where a person seeks only to protect property or monetary rights. *Holt* v. *Indiana Manufacturing Company*, 176 U.S. 68, 72, 20 S.Ct. 272, 44 L. Ed. 374 (1900); *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496, 531, 59 S.Ct. 954, 83 L. Ed. 1423 (1939); *Abernathy* v. *Carpenter*, W.D. Mo., 208 F. Supp. 793, 794 (1962) aff'd 373 U.S. 241, 83 S.Ct. 1295, 10 L. Ed. 409 (1963)."

We perceive no allegation of injury to the plaintiff which is redressable in the federal right of action furnished by either §1983 or §1985[1] and therefore cognizable in the District Court by virtue of 28 U.S.C.A. §1343. Consequently, the District Court did not err in dismissing the amended complaint. It was without jurisdiction.

And, there is no doubt that a single district judge, where a three-judge court is requested, may consider the question of his own jurisdiction in an appropriate case. *Stamler* v. *Wills*, 7 Cir., 371 F. 2d 413, 414 footnote 3; *Lion Manufacturing Corporation* v. *Kennedy*, D.C. Cir., 330 F. 2d 833. Moreover, plaintiff does not seek to restrain "the enforcement, operation or execution of any State statute" within the meaning of 28 U.S.C.A. §2281, and therefore denial of a three-judge court was proper on this independent ground. *Ex parte Collins*, 277 U.S. 565, 566-569; *Pierre* v. *Jordan*, 9 Cir., 333 F. 2d 951, 956-957.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

---

[1] 42 U.S.C.A. §1988 furnishes no independent cause of action cognizable under §1343. It relates to procedure and remedy.

APPENDIX B

Constitutional Provisions, Statutes And Ordinances Involved.

A. *Resolution by Board of Commissioners of Cook* Co., Printed in its Journal of Proceedings December 11, 1962:

"WHEREAS, the Public Building Commission of Chicago has recommended that the County of Cook establish a PUBLIC law library in the new Civic Center; and

"Whereas, The Chicago Law Institute has been asked to donate its library collection to the proposed Cook County Law Library; and

"Whereas, on November 30, 1962, the President of the Board of Commissioners of Cook County, in a letter to the President of the Chicago Law Institute, submitted the following proposal:

1. The name of the law library shall be the Chicago Law Institute Library, thus preserving traditions respected by all the members of the Bar.
2. The law library shall be available to all members of the bar AND to THE PUBLIC generally.
3. An advisory board of nine members, composed of lawyers admitted to practice before the Supreme Court of the State of Illinois, shall be established. The Deputy Court Administrator of Cook County shall be a member, two-thirds of the members shall be named initially by the MEMBERSHIP of the Chicago Law Institute, and the JUDGES of the Circuit Court of Cook County shall elect the other two members. The advisory board shall establish the policy for the operation and maintenance of the law library, which shall be directed by a professional law librarian.

4. Withdrawal privileges shall be extended to all lawyers admitted to practice before the Supreme Court of Illinois and to those members of the public demonstrating financial responsibility.
5. Cook County shall assume ownership of the library collection of the Chicago Law Institute PRIOR to its being moved to the Civic Center.

"NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Cook County concur in the proposal of the President submitted to the Chicago Law Institute on November 30, 1962; and BE IT FURTHER RESOLVED that, if it is NOT feasible for the Chicago Law Institute to move its library collection to the new Civic Center, that it is the INTENTION of the Board of Commissioners of Cook County to allow the Chicago Law Institute to REMAIN IN THE SAME LOCATION WITHIN THE COUNTY BUILDING." (italics supplied).

B. *The Laws of the Illinois Legislature for 1963,* p. 2441, sec. 1 amended as of August 6, 1963, as the result of the introduction and sponsorship, in June, 1963 of House Bill 1199 by Senator Donald J. O'Brien, spokesman for the Chairman of the Public Buildings Commission of Chicago (the Mayor of Chicago), The County Law Libraries Act, 1965 Ill. Rev. Stats., ch. 81, sec. 81, to read as follows:

"The county board of any county may establish and maintain a county law library, to be located in any county building at the county seat of government. The term 'county building' shall include premises leased by the county from a public building commission created pursuant to the Public Building Commission Act, approved July 5, 1955, as amended.

"The facilities of such library shall be FREELY available to all licensed Illinois attorneys, judges, . . . and to ALL MEMBERS OF THE PUBLIC. . . .

"Each such clerk shall commence such charges and collections upon receipt of written notice from the chairman of such county board that the board has acted under the

provisions of this Act to establish and maintain such a law library.

"Such fees . . . shall be remitted by such clerks monthly to the county treasurer, and by him retained in a special fund designated as the County Law Library Fund . . . in any county having a population of more than 500,000 (counties of 500,000 or less only came under the Act prior to the Amendment in H.B. 1199) inhabitants, the county board shall order disbursements from such fund, and *such county board may appoint a library committee of not less than 9 members* who, by MAJORITY VOTE, may recommend to such county board as to disbursements of such fund and the operation of such library." (italics supplied).

C. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for September 30, 1963, authorizing the President to notify the Clerk of Court of its action to come under the County Law Library Act, as amended, above.

D. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for June 17, 1965, at page 1937:

"June 17, 1965

To the Honorable, the Members of the Board of Commissioners of Cook County.

Members:

Pursuant to authority vested in me by law, I hereby appoint *Thomas F. Allman*; Raymond Canady; *Joseph R. Cecchini*; John W. Daly; Louis J. Gilliberto; Ben Liss; Leo J. Powers; John W. Tuohy; Milton P. Webster to serve as members of the Advisory Board of the Cook County Law Library.

I urge the concurrence of the Cook County Board.

Respectfully submitted,
SEYMOUR SIMON,
President.

"Commissioner Wilson moved that the recommendation be concurred in.

Yeas: Bobrytzke, Bonk, Dolezal, Dunne, Erickson, Fulle, Grupp, Huppert, Piatrowski, Ryan, Sneed, Touhy, Wilson, Simon—14

Nays: None."

E. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for November 23, 1965, p. 3596:

"November 22, 1965

To the Honorable, the Members of the Board of Commissioners of Cook County.

Members:

I transmit herewith an agreement submitted by Robert Cushman, attorney for the Chicago Law Institute, providing for the donation of the library collection of the Chicago Law Institute to the Cook County Law Library.

This agreement has been reviewed by the State's Attorney. He states that the County may *legally* enter into this agreement.

Therefore, I request authority from the County Board to execute this agreement.

Respectfully submitted,
SEYMOUR SIMON
President"

The agreement (which was the same as Exhibit C later attached to the complaint in 65 CH 6863) followed at pp. 3597-3600, the pertinent concluding paragraph of the Resolution reading:

"Commissioner Bonk moved that the recommendation of the President be concurred in, and that the proper officials be authorized to sign the agreement on behalf of Cook County.

Yeas: Bobrytzke, Bonk, Chaplin, Dolesal, Erickson, Fulle, Grupp, Huppert, Piotrowski, Ryan, Sneed, Touhy, Wilson, Simon—15

Nays: None."

F. *U.S. Constitution*:

Art. I, s. 10: "No state shall pass any . . . law impairing the obligation of contracts."

Amendments, Art. IV: "The right of the people to be secure in their . . . papers and effects against unreasonable search and seizure shall not be violated."

Art. V: "No person shall be . . . deprived of LIBERTY or property without due process of law; nor shall any private property be taken for public use without just compensation."

Art. XIV, s. 1: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; nor shall any state deprive any person of . . . LIBERTY or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

G. *Illinois Constitution*:

Art. IV, s. 20: "The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan, or extend its credit to, or in aid of, any public or other corporation, association or individual."

H. *Federal Statutes*:

1. Title 28 U.S.C. s. 1331. Federal Question; Amount in Controversy:

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws . . . of the U.S."

2. Title 28 U.S.C. s. 1343. Civil Rights and Elective Franchise:

"(1) To recover damages for injury to his . . . property, or because of any deprivation of ANY right or privilege of a citizen of the U.S., by ANY act done in furtherance of any *conspiracy* mentioned in s. 1985, Title 42.

"(3) To redress the deprivation, under color of any state law, statute, *ordinance* . . . of ANY right, privilege or immunity secured by the Constitution of the U.S., . . . for equal rights of citizens or of all persons within the jurisdiction of the U.S."

3. Title 42 U.S.C. s. 1983. Civil Action for Deprivation of Rights.

"Every person who, under color of any statute, *ordinance* . . . of any State . . . subjects or causes to be subjected, any citizen of the U.S. . . . to the deprivation of ANY rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an . . . suit in equity."

4. Title 42 U.S.C. s. 1985. Conspiracy to Interfere With Civil Rights.

"(2) . . . if 2 or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State . . . with intent to deny to any citizen the equal protection of the laws, or to injure him or his PROPERTY for lawfully enforcing, or attempting to enforce, the right of any person, or *class of persons,* to the equal protection of the laws."

5. Title 28 U.S.C. c. 151. Declaratory Judgments.

"s. 2201. *Creation of Remedy* "In case of actual controversy within its jurisdiction . . . any court of the U.S., upon filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, *whether or not further relief is or could be sought.* Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

"s. 2202. *Further Relief.* Further necessary or proper relief *based on a declaratory judgment or decree* may be granted, after reasonable notice and hearing against any adverse party whose rights have been determined by such judgment."

6. Title 28 U.S.C. s. 2281. Injunction Against Enforcement of State Statute; three-judge court required.

"An . . . injunction restraining the enforcement, operation or *execution* of any State *statute* by restraining the action of any *officer* of such State in the enforcement or execution of such statute . . . shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under sec. 2284 of this title."

7. Title 28 U.S.C. s. 2284. Three Judge District Court.

"(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall IMMEDIATELY notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to *hear* and *determine* the action or proceeding."

8. Title 28 U.S.C. s. 2283. Stay of State Court Proceedings.

"A court of the U.S. may not grant an injunction to *stay* proceedings in a State court except . . ."

LIBRARY
SUPREME COURT, U. S.

FILED
FEB 12 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 962

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

JOHN J. STAMOS,
State's Attorney of Cook County,
EDWARD J. HLADIS,
Chief of Civil Division,
RONALD BUTLER,
Assistant State's Attorney,
Attorneys for Respondents.

500 Chicago Civic Center,
Chicago, Illinois 60602.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. .....

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS AND ORDERS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is not reported. It appears as Appendix A to the Petition for Writ of Certiorari. The order of the Court of Appeals entered on September 27, 1967, denying rehearing, appears as Appendix B to the Petition.

The order of the United States District Court for the Northern District of Illinois, Eastern Division, entered on December 12, 1966, denying petitioner's motions to vacate the order of September 7, 1966 (which dismissed the amended complaint) and to reconsider the order of October 13, 1966 (which declined to vacate the dismissal order), appears at Page 52 of Appellant's Appendix filed in the Court of Appeals. The order of the District Court

entered on January 11, 1967, denying petitioner's motion to designate a three-judge Federal Court to hear the amended complaint, appears at Page 54 of Appellant's Appendix filed in the Court of Appeals.

JURISDICTION.

The District Court lacked jurisdiction to hear this case and lacked authority to convene a three-judge court to hear it.

Title 28 U. S. C. Section 2281 is inapplicable to this case and therefore afforded no authority for the District Court to convene a three-judge court.

This case does not raise any constitutional question nor any other Federal question and it does not raise any claim cognizable under the Civil Rights Act. Accordingly, neither Title 28 U. S. C. Section 1331 nor Title 28 U. S. C. Section 1343 affords a basis for Federal jurisdiction over the matter.

The District Court also lacked jurisdiction because neither the Civil Rights Act nor the Declaratory Judgment Act conferred on petitioner any claims or causes of action upon which relief could be granted to him.

QUESTIONS PRESENTED.

I.

Did the District Court err in refusing to convene a three-judge Federal court where the complaint did not challenge the constitutionality of a State statute and did not seek to restrain the enforcement of a State statute, and the defendants were local officers acting in a matter of local concern?

II.

Did the District Court err in dismissing the complaint and in thereafter refusing to vacate the order of dismissal where the allegations failed to demonstrate any grounds for Federal jurisdiction and failed to state any claims on which relief could be granted to plaintiff?

STATUTES INVOLVED.

Title 28 U. S. C. Section 1331:

> "(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

Title 28 U. S. C. Section 1343:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
>
> (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Title 28 U. S. C. Section 2201:

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

Title 28 U. S. C. Section 2202:

> "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

Title 28 U. S. C. Section 2281:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

Title 42 U. S. C. Section 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 42 U. S. C. Section 1985:

"(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Title 42 U. S. C. Section 1988:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against

law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty."

STATEMENT.

This is a petition for a writ of certiorari to issue to review two orders of the United States Court of Appeals for the Seventh Circuit whereby that court affirmed two orders of the United States District Court for the Northern District of Illinois, Eastern Division, and denied petitioner's request for rehearing thereon. The District Court's orders denied petitioner's motion for vacation of a prior order dismissing his amended complaint and petitioner's motion that the District Court request the Chief Judge to specify two other judges to serve as members of a three-judge court to hear and determine petitioner's amended complaint for declaratory and injunctive relief against respondents. The amended complaint sought to have declared invalid a resolution of the Board of Commissioners of Cook County authorizing the Board's President to enter into a proposed contract with The Chicago Law Institute and also sought to restrain respondents from commencing any State court action to cancel an agreement of March 11, 1958, between the County of Cook and The Chicago Law Institute providing for housing the Institute's law library in the County Building for a ten-year period expiring April 4, 1968, in exchange for free access to the law library by the Judges of the Circuit Court of Cook County and by certain other designated county and municipal officials.

Petitioner filed his original complaint on July 1, 1966,

in the United States District Court for the Northern District of Illinois, Eastern Division. On motion of respondents, the District Court dismissed the complaint on August 31, 1966, for lack of jurisdiction and for failure to state a claim on which relief could be granted. On September 7, 1966, the District Court vacated the dismissal order of August 31, 1966, granted leave to petitioner to file his amended complaint for declaratory and injunctive relief, and thereupon dismissed the amended complaint *sua sponte*. On October 13, 1966, the District Court denied petitioner's motion to vacate its order of September 7, 1966, dismissing the amended complaint. On December 12, 1966, the District Court denied yet another motion of petitioner, this one requesting the court to reconsider its denial on October 13, 1966, of his previous motion and again requesting vacation of its dismissal of the amended complaint on September 7, 1966. Thereafter, on January 11, 1967, the District Court denied petitioner's final motion, requesting that the court notify the Chief Judge of the Court of Appeals to designate two other judges to serve as members of a three-judge court to hear and determine petitioner's amended complaint for declaratory and injunctive relief against respondents.

On July 21, 1967, the Court of Appeals rendered its judgment affirming the District Court's orders of December 12, 1966, and January 11, 1967. Thereafter on September 27, 1967, the Court of Appeals denied petitioner's request for rehearing on its judgment of July 21, 1967, affirming entry of the District Court's orders. It is the two orders of July 21, 1967, and September 27, 1967, for the review of which petitioner now prays that a writ of certiorari issue.

ARGUMENT.

I.

REFUSAL TO CONVENE A THREE-JUDGE COURT WAS PROPER.

Both in his amended complaint and in his motion of January 11, 1967, petitioner requested that the District Court notify the Chief Judge of the Court of Appeals to designate two other judges to serve as members of a three-judge court to hear and determine the case. The request to convene a three-judge court was based on Title 28 U. S. C. Section 2281.

It is well-settled that § 2281 is to be narrowly construed so that only those cases which plainly fall within the class described by it are referred to a three-judge court. See, *e.g., Marshall* v. *Sawyer,* 301 F. 2d 639 (9th Cir. 1962). Moreover, the individual District Court Judge to whom the request that a three-judge court be convened is made, clearly may properly consider the question of his own jurisdiction. *Stamler* v. *Willis,* 371 F. 2d 413, 414 (n. 3) (7th Cir. 1966); *Lion Manufacturing Corporation* v. *Kennedy,* 330 F. 2d 833 (D. C. Cir. 1964). Examination of the amended complaint shows that § 2281 is clearly inapplicable to support the request for a three-judge court to hear this case, for the following reasons:

1. There is no meritorious allegation that any statute of the State of Illinois is unconstitutional. Section 2281 does not require a three-judge court where the constitutionality of a State statute is not questioned. *Sherwood* v. *Bradford,* 246 F. Supp. 550, 551 (S. D. Calif. C. D. 1965). Furthermore, even if the

amended complaint had alleged that a statute of the State of Illinois was unconstitutional, § 2281 would not have required the District Court to request that a three-judge court be convened unless a substantial Constitutional question were presented. *Powell* v. *Workmen's Compensation Board of State of New York,* 327 F. 2d 131 (2nd Cir. 1964).

2. The amended complaint seeks to enjoin the members of the Board of Commissioners of Cook County and the State's Attorney of Cook County. These officials are local officers, not State officers, whereas § 2281 is applicable only to State officials. Where defendants are local officers, and the case concerns a matter of local interest only, § 2281 does not require a three-judge court. *Pierre* v. *Jordan,* 333 F. 2d 951, 957 (9th Cir. 1964).

3. Petitioner does not seek to restrain "the enforcement, operation or execution of any State statute." This deficiency makes § 2281 inapplicable as authority for convening a three-judge court to hear and determine the amended complaint. *Ex Parte Collins,* 277 U. S. 565 (1928).

Respondents respectfully submit that § 2281 cannot properly be invoked to support a three-judge court in this case. Accordingly, the District Court was correct in refusing to request that a three-judge court be convened, and the Court of Appeals was correct in affirming the District Court's order of January 11, 1967, to that effect.

II.

DISMISSAL FOR WANT OF FEDERAL JURISDICTION WAS PROPER.

Petitioner relies on Title 28 U. S. C. Section 1331 and Title 28 U. S. C. Section 1343 to establish Federal jurisdiction in this case, but neither section supports petitioner's reliance, and the District Court was clearly correct in dismissing the amended complaint for want of Federal jurisdiction.

A. There Is No Federal Question Under § 1331.

The amended complaint alleges that a certain resolution of the Board of Commissioners of Cook County constitutes an impairment of a contract between The Chicago Law Institute and the County of Cook. Such a conclusory allegation clearly is insufficient to establish Federal jurisdiction. Furthermore, a resolution does not amount to an ordinance or a law impairing the obligation of a contract. *Des Moines* v. *City Ry.*, 214 U. S. 179 (1909). Therefore it is clear that petitioner's mere allegation of impairment of contract, unsupported by facts, cannot afford the necessary basis for establishing Federal jurisdiction to hear a suit to enjoin enforcement of the resolution of the Board of Commissioners of Cook County.

The amended complaint also alleges that petitioner has been deprived of property without due process of law, but, again, nowhere does the amended complaint allege any facts to support such a legal conclusion. Indeed, the factual allegations of the amended compaint rebut petitioner's conclusory allegation that he has been deprived of property without due process of law. It is clearly not sufficient, for purposes of establishing Federal jurisdiction to hear and determine a lawsuit, merely to make conclusory

allegations without the support of facts. *Kregger* v. *Posner,* 248 F. Supp. 804 (E. D. Mich. S. D. 1966).

Respondents respectfully submit that petitioner's conclusory allegations of impairment of contract and deprivation of property without due process are insufficient to establish Federal jurisdiction under § 1331, and that both the District Court and the Court of Appeals properly determined there was no Federal jurisdiction to hear this case.

B. There Is No Federal Jurisdiction Under § 1343.

The amended complaint purports to state a claim under the Civil Rights Act, 42 U. S. C. §§ 1983, 1985, 1988, and petitioner thereby attempts to invoke Federal jurisdiction pursuant to Title 28 U. S. C. Section 1343. The gist of petitioner's complaint appears to be that he had a property interest in the assets of The Chicago Law Institute, of which he has been deprived by respondents acting under color of State law. There has been no such deprivation, but, in any event, such conclusory allegations, devoid of any factual allegations which support the legal conclusion, clearly are not sufficient to establish Federal jurisdiction. *Ream* v. *Handley,* 359 F. 2d 728 (7th Cir. 1966); *Abernathy* v. *Carpenter,* 208 F. Supp. 793 (W. D. Mo. C. D. 1962).

Furthermore, Sections 1983, 1985 and 1988 of the Civil Rights Act are not applicable to this case and therefore cannot afford any basis for Federal jurisdiction. Section 1983 provides a remedy when a person had been deprived of "any rights, privileges or immunities secured by the Constitution and laws" by an individual acting under color of State law. In his amended complaint, petitioner fails to demonstrate any such deprivation. Furthermore, the members of a non-profit organization do not have any interest in the assets of the organization which can be

classified as a "right, privilege or immunity" secured by the Constitution, but even if petitioner, as a member, did have such a property interest in the assets of The Chicago Law Institute, that interest is not the kind of interest which falls within the protection of the Civil Rights Act. *Ream* v. *Handley,* 359 F. 2d 728, 731 (7th Cir. 1966); see *Anderson* v. *Tenshaw Land & Timber Co.,* 326 F. 2d 855 (5th Cir. 1964).

Section 1985 requires five elements to state a cause of action for relief under it, as follows: (1) a conspiracy by the defendants; (2) with the purpose of depriving the plaintiff of equal protection of law or equal privileges and immunities under law; (3) a purposeful intent to discriminate; (4) action by the defendants under color of State law or authority; and (5) injury to the plaintiff's person or property or his deprivation of a right or privilege of a United States citizen resulting from acts in furtherance of the conspiracy. *Colon* v. *Grieco,* 226 F. Supp. 414 (D. New Jersey 1964). The amended complaint lacks these elements, and jurisdiction accordingly cannot be based on a cause of action under § 1985. Except for one allegation that respondents acted "in concert," the amended complaint nowhere shows any conspiracy among respondents. Petitioner's characterization of the conduct of certain officials, who are not parties in this action, is without any basis in fact, but even if there were merit to these allegations, his characterization of the conduct of certain State officers as "conspiratorial" and "unlawful" is insufficient to state a claim for relief against respondents. *Dinwiddie* v. *Brown,* 230 F. 2d 465 (5th Cir. 1956), *cert. den.,* 351 U. S. 971 (1956), *reh. den.,* 352 U. S. 861 (1956). Furthermore, nowhere does the amended complaint show a purposeful intent on respondents' part to discriminate against petitioner, and nowhere does it show any compensable injury to petitioner's property or rights.

Section 1988 obviously furnishes no independent cause of action cognizable under § 1343, as do § 1983 and § 1985, and merely governs procedure and remedy in suits brought under the latter two sections. Section 1988 is wholly inapplicable to this case and cannot possibly provide petitioner with a Federal right of action cognizable in the District Court under § 1343.

Respondents respectfully submit that petitioner has failed to demonstrate any injury which is redressable in a Federal right of action under § 1983, § 1985, or § 1988 of the Civil Rights Act. Therefore these sections are not applicable to establish Federal jurisdiction under § 1343. Accordingly, both the District Court and the Court of Appeals properly determined there was no Federal jurisdiction to hear this case.

III.

DISMISSAL FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF COULD BE GRANTED WAS PROPER.

Petitioner relies on Title 28 U. S. C. Sections 2201 and 2202 and on Title 42 U. S. C. Sections 1983, 1985 and 1988 to establish his claim or claims for relief, but none of these sections support the alleged causes of action.

A. No Relief Is Warranted Under §§ 2201-2202.

Sections 2201 and 2202 of the Declaratory Judgment Act, 28 U. S. C. §§ 2201-2202, do not help petitioner in stating a claim on which relief can be granted. These sections do not create an independent ground of Federal jurisdiction, but merely afford a procedure for securing relief where there is already an actual controversy within the jurisdiction of a Federal court. *Ream* v. *Handley,* 359 F. 2d 728, 732 (7th Cir. 1966). Petitioner having failed in otherwise establishing a Federal question in this case,

cannot now invoke § 2201 and § 2202 as an independent ground for relief in the District Court.

B. No Relief Is Warranted Under §§ 1983, 1985, 1988.

Sections 1983, 1985 and 1988 of the Civil Rights Act, 42 U. S. C. §§ 1983, 1985, 1988, do not help petitioner in stating a claim on which relief can be granted. These sections are not applicable to this case, for the reasons stated at Point II (B), *supra,* but even if they were applicable, they would not warrant any relief because bare conclusory allegations, without support in facts alleged, are insufficient to make out a claim for relief under the Civil Rights Act. *Pugliano* v. *Staziak,* 231 F. Supp. 347 (W. D. Pa. 1964), *aff'd,* 345 F. 2d 797 (3rd Cir. 1965). The complaint in an action purporting to be brought under the Civil Rights Act must allege highly specific facts. Petitioner failed to do so in his amended complaint, and the District Court properly determined that the amended complaint failed to state a claim on which relief could be granted under the Civil Rights Act.

Respondents respectfully submit that petitioner has failed to state any claim upon which relief could be granted by the District Court. Accordingly, both the District Court and the Court of Appeals properly determined that petitioner's amended complaint should be dismissed.

CONCLUSION.

Respondents respectfully submit that the District Court properly refused to convene a three-judge court, since petitioner's amended complaint did not challenge the constitutionality of a State statute and did not seek to restrain the enforcement of a State statute, and respondents were local officers acting in a matter of local concern. Respondents further respectfully submit that the District Court

properly dismissed the case and thereafter properly refused to vacate its order of dismissal, since the amended complaint failed to demonstrate any grounds on which to maintain Federal jurisdiction and also failed to state any claims on which relief could be granted to petitioner.

The decisions of the District Court and the Court of Appeals are clearly correct. No conflict of decisions is presented. No constitutional questions or any other Federal questions are presented. Therefore the petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN J. STAMOS,
State's Attorney of Cook County,

EDWARD J. HLADIS,
Chief of Civil Division,

RONALD BUTLER,
Assistant State's Attorney,

Attorneys for Respondents.

500 Chicago Civic Center,
Chicago, Illinois 60602.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

NO. 962

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, et al.,

Respondents.

On Petition For Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit

REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION.

Charles V. Falkenberg,
221 N. LaSalle Street,
Chicago, Illinois 60601,

Attorney for Petitioner.

William Hettleman,
Of Counsel.

In The

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REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION.

Respondents' Brief seems to contain more general denials than Argument. Assuming arguendo that the issue before the Seventh Circuit was, as they contend, whether petitioner's complaint complied with Title 28 U.S.C. s. 2281, and not, as petitioner contends, whether s. 2283, supported by

Dombrowski, forbade the trial court to grant the injunctive relief prayed, the respondents must concede that the trial court refused improperly to take jurisdiction, if it can be established that the case involved the key words in s. 2281 "state statutes", "state officers", the "execution" by them of state statutes in violation of the federally protected rights of the petitioner and all Chicago Law Institute members similarly situated.

1. What "state statutes" does the amended complaint refer to?

a. The Public Law Library Act, L. 1961, p. 473, AS AMENDED (A. 9). Is not an amendment by the Illinois legislature of its own Act a "state statute"?

b. The Cook County Ordinance of December 11, 1962 (A. 6).

c. The Cook County Ordinance of November 23, 1965 (A. 13)

Respondents contend the two said Cook County Resolutions are neither "ordinances" used in some of the jurisdictional statutes, nor the "state statutes" referred to in the above s. 2283. At p. 10

of their Brief,as at p. 13 of their Motion to Dismiss the companion Jurisdictional Statement in 961, they cited Des Moines v. City Ry. in support. It held that,under Iowa law, that resolution could not be an ordinance, but only a nudge to the Ry. to tear up its tracks.

Page 31 of appellants' Reply to appellees' Motion to Dismiss proves that Cook County argued in Moseid that its Resolution of September 30,1965 was an"ordinance". If that resolution was an "ordinance", why are not the resolutions of December 11,1962 and of November 23,1965 likewise ordinances?

Pages 29-30 of the same appellants' Reply proved that,under Illinois law,Cook County is a subdivision of it,and that its enactments,being of the State's GENERAL policies,such as relate to governmental affairs, finance,taxation, the administration of justice pursuant to which the above ordinances were passed, partake of state,not local,statutes. The enactments of a city are limited and so are "local" laws.

Page 17 of the same appellants' Reply,thru page 18, deals with respondents' authorities and their

disposal. They need not be essayed again here.

The best summary of the cases dealing with the subject is to be found in 14 American Jurisprudence, Counties, at p. 183,sec. 3:

> "A county is a constituent part of the State - a wholly subordinate political subdivision or instrumentality, created and existing with a view to the policy of the state at large and serving as an agency for certain specific purposes."

Approaching the subject from the right of Action against Counties, the same volume states at p. 237, s. 78:

> "The right to sue a county is limited to cases when the legislature has ordained that it should be liable to suit. This limitation is founded upon the theory that, since there is no remedy against the state, without its consent, there may be none against the county, which forms an integral part of the sovereign", citing cases in footnote 15.

The earliest case of this Court on the subject, Maryland to the use of Washington County vs. B & O RR. Co., 3 How.(44 U.S.,1845),states at the bottom of p. 550:

> "They (counties) are a corporate body,it is true,and the members who compose it are chosen by the people of the county. But like similar corporations in every other county in the state, it (Washington County) is created for the purposes of government,"etc.

2. Are the members of the Board of Commissioners of Cook County "state officers"? They constitute the highest governing body of the County. If the County is an integral part of the sovereign State, they are "state officers", charged with the duty and responsibility of the enforcement, operation or "execution" of state statutes. Respondents' defense is so weak it must rely on Kregger, at p. 11 of their Brief and p. 14 of their Motion to Dismiss appellants' Jurisdictional Statement. That case held only that a lawyer in private practice was not a state officer which is almost self-evident, tho he is an officer of the court. Cook County justified its ouster of the Institute and its members from their workshop on the 10th floor of the Cook County Building on August 12, 1966 under authority of the 1963 amendment by the legislature of its 1961 County Law Library Act, c. 81, s. 81, and under its own implementary ordinances of September 30, 1963 and November 23, 1965. If its act was not pursuant to the enforecemnt and execution of state statutes, what was it?

3. Has the Amended Complaint set forth fully that Cook County caused the enactment of those state

statutes,as part of their conspiracy to take the assets of the Chicago Law Institute for a public use without just,or any, compensation in lieu of condemnation procedures,and in violation of the 4th,5th, and 14th(1) amendments to the U.S. Constitution which resulted in depriving the Institute and its members of their personal and prpperty rights thereunder and in the cancellation of a valid and subsisting lease,a contract thus impaired in violation of Article I,sec. 10 of the U.S. Constitution? The dismissal of the Amended Complaint admitted the ultimate facts therein,so far as well pleaded, were true. Did they present a federal question?

a. The opinion of the Seventh Circuit stated they did but held it was frivolous,(Appendix A,pp. 2a-3a), because "some" members only opposed the ouster.

b. The private foundation of the Institute,in 1857, resulted in a special charter by the State of Illinois which conferred upon the Institute and its members certain rights,franchises, privileges,immunities,and incorporeal hereditaments. It has been established that incorporeal hereditaments are property,and

and that a lease is an incorporeal hereditament. It is a contract embodying property rights, and so is a "contract" within the contract clause which Cook County, under color of state law, has impaired. (Record, Memorandum on Citation of Additional Authorities, pp. 8-10).

c. Cook County caused threats to be made and published to oust before the proceedings in 65 CH 6863 were concluded. (A. 11, 20).

d. On June 18, 1965, the Institute members rejected almost unanimously (600 against to the Institute Board members 13 votes only) its Board's recommendations to "donate" all its assets to Cook County, to permit the use of the Institute's name to an application cy pres agreeing to such gift, and to dissolve. The Institute Board, nevertheless, voted 4 to 3, on November 23, 1965 to do what it was denied power to do, in defiance of the corporation's mandate. Cook County had, on June 17, 1965, secretly appointed Allman and Cecchini, who cast 2 of the 4 votes, to the advisory committee provided for in the Public Law Library Act, 1963 amendment, c. 81, s. 81. Knowing all this, Cook County passed the November 23, 1965 ordinance. (A. 7-10).

CONCLUSION

Review should be granted.

William Hettleman,
Of Counsel.

Respectfully submitted,
Charles V. Falkenberg,
Atty. for Petitioner.

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vs.

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Respondents.

Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit.

PETITION FOR REHEARING

Charles V. Falkenberg,
221 N. LaSalle Street,
Chicago, Illinois 60601

Attorney for Petitioner.

William Hettleman,
Of Counsel.

In The

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PETITION FOR REHEARING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the U.S.

Comes now Thomas A. McManigal and prays that this Court grant rehearing of its order of March 11,1968, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Circuit in the above entitled case as prayed for in the petition filed January 26,1968 herein.

REASONS FOR GRANTING REHEARING AND ISSUING WRIT

1. Aside from showing the substantial constitutional questions involved, and the general importance of whether a quasi-municipality may appropriate property without compensation, as asubstitute for condemnation procedures, the petition for certiorari stressed the conflict between the judgment of the lower federal courts and a relativaly recent case in this Court, and between the scope of review in the Seventh and Ninth Circuits on precisely the identical, or similar, issues, sought to be reviewed in both courts.

2. A preliminary print in the Advance Sheets of the Federal Reporter for March 11, 1968, the same day the petition for certiorari herein was denied, contains the opinion of the Second Circuit in Wright v. McMenn, 387 Fed. 2d 519 on appeal from the trial cougt's grant of a motion to dismiss a complaint which conflicts with the practice of disregarding the rule that the facts in the pleadings must be taken as true, in the opinion of the Seventh Circuit in the case at bar, and which led the latter Court into crutial error.

The parties agreed that the Appendix, filed in the appeal to the Seventh Circuit, shall be the Record in this Court. P. 7, par. 8 thereof, contains the allegations of the Amended Complaint, stating very specifically that, at the members' special meeting on June 18, 1965, their almost unanimous vote (600: 13) was against donating the corporate assets to Cook County, or permitting the use of its name to file a cy pres suit therefor. Contrary to this Record, the Seventh Circuit's opinion (p. 3a, last par., pet. for writ of cert.) stated the "complaint shows simply a dispute between some members" etc.

3. The Amended Complaint was grounded on Ex Parte Young, 209 U.S.123, seeking to enjoin contemplated action in state courts to enforce Cook County's ordinances whose application to the facts in the case infringed the constitutional rights of the members. It was dismissed sua sponte on sec. 2283 and this Court's allegedly supporting decision of Dombrowski, 380 U.S. 479, which really held for the petitioner McManigal's contention. Marshall v. Sawyer, 301 F(2) 639, 647(9th CA) confined the scope of the appeal to that issue. The Seventh Circuit did not even refer to Dombrowski and enlarged the scope of the appeal beyond sec. 2283 and Dombrowski's applicability, contrary to the Ninth Circuit's practice.

CONCLUSION

In the interest of uniformity in federal practice and procedure, and for the reasons in the petition for certiorari, it is urged respectfully that rehearing be granted, and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

CHARLES V. FALKENBERG
221 N. LaSalle Street
Chicago, Illinois 60601
Attorney for Petitioner

Pursuant to Rule 58, I hereby certify that the foregoing is presented in good faith, not for delay, and is restricted to the grounds specified in par. 2 thereof.

Charles V. Falkenberg